CF0000057482

(2)

U-23/(Jail)
P. R. 3436-88

Cri A-762/89

APPEAL OF PRISONER

JUN 1989 594

Receipt Clerk
District & Sessions Judge, Jabalpur

No. 9761 Name केरका उर्फ मोहन आत्मज जैला साहू

Father's name जैला साहू Residence निवासी - नमरदा, थाना - पिलवेगढ़, तहसील - बलौदाबाजार

Residence जिला - रायपुर (म.प्र.) Age 65 साल

Sentenced आजीवन कारावास on 4.4.1989 Division Bench (Criminal)

Under section 302 भा.दं.वि. by न्यायालय तृतीय अतिरिक्त सत्र न्यायाधीश - रायपुर
जिला - बलौदा बाजार

S.T.No. 146/88

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement 4.4.1989

2 Date of which copy received 5.4.1989

3 Date on which Appeal sent 1.6.1989

4 whether the prisoner wishes to be represented or not – Yes / No.

No. 9761 Name केरका उर्फ मोहन आत्मज जैला साहू

Continued in ~~केन्द्रीय जेल~~ Jail रायपुर (म.प्र.)

No. 471/आपराध/89 Dated 1.6.1989 198

Forward to the ~~CHIEF JUDICIAL MAGISTRATE~~ माननीय अति. पँजीयक, मध्यप्रदेश उच्च न्यायालय जबलपुर (म.प्र.)

to gather which a copy of order passed in the case for favour of transmission to the proper Appellate Court.

अधीक्षक
केन्द्रीय जेल
रायपुर (म.प्र.)

Superintendent Jail

Date of receipt in C. J. M's office 5.6.89

Date of receipt record to accompany

Memo of Appeal of the Appellate court

No Dated 198

Forwarded to the

4-4 to 1-6
= 26
31

C. J. Magistrate

Date of receipt in Appellate Court

1
58

(P. T. O.)

(19)

A.F.R

YOGENDRA SINGH KANWAR
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Date: 2025.02.20 15:12:44 +0530

HIGH COURT OF CHHATTISGARH : BILASPUR

CRIMINAL APPEAL NO.762 OF 1989

Chherka @ Mohan

Vs.

State of Chhattisgarh

CORAM : HON'BLE SHRI FAKHRUDDIN, J &
HON'BLE SHIR DILIP DESHMUKH, J

Shri Suryakant Mishra, counsel for the appellant.

Shri Sachin Singh Rajput, Panel Lawyer for the State.

J U D G M E N T

Per Fakhruddin, J:

Heard learned counsel for the parties.

2. The appellant has been convicted for an offence punishable under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life vide judgment dated 4th April, 1989 by the Third Additional Sessions Judge, Raipur, Camp : Baloda Bazar.

3. Briefly stated the facts are that the accused appellant is the resident of village Nagarda and he was in relation of Mangli Bai. He came after a year to the house of the Mangali Bai. He demanded some monetary help of Rs. 500/- or so from Mangli Bai for the marriage of his daughter. Mangali Bai allowed him to stay. While he was in the house, Mangli Bai sold 60 bags paddy to one Ramesh Agrawal. Thereafter the accused went out pretending that he was going to his house, but came back in the evening of

Wednesday after Mangli Bai left the house along with her daughter for attending the marriage of some relative. In the house, the son of Mangli Bai namely Pilaram @ Awadhram and his grand mother Bindamati Bai were there. Thereafter on Thursday, Pilaram also went to attend the marriage leaving deceased Bindamati and the appellant. When Pilaram came back on 26-2-1988 and knocked the door, the house was not opened. Thereafter he entered the house from the neighbour's house and found that his grand mother was lying dead on the cot. On his cry being raised, the village persons assembled on the spot. It was noted that the gold ornaments i.e. Pipal Pan, Silver Utensils and the cash were missing. The torch kept below the pillow of the deceased was also stolen. The report was lodged and in that report doubt was expressed on the accused. On 28-2-1988, the accused was apprehended near the saw mill of Neelkanth Shukla at village Misda and golden Pipal Pan, one Silver Chain containing 15 Re. coins, one Silver Sakri, one Silver Guthla and an amount of Rs.294/- were seized from the accused/appellant. On further interrogation, on the memorandum of accused one bag containing saree, torch, fhoolkans ka lota, thali, two fhoolkans ki tharkuliya were seized from the house of one Dayaram Sahu. At the instance of accused/appellant one pair silver nagmori and one pair silver kathar were seized from the witness Chandrika Prasad. Rs.200/- were seized from the witness Pooran Prasad.

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4. Dr. C.L. Patel, P.W.8 conducted the autopsy on 26-2-1988 and opined that the death was homicidal due to throttling. The post mortem report is Ex.P/11. The articles seized were put for identification where they were identified by Mangli Bai (P.W.11). After completion of the investigation, challan was filed. The appellant abjured the guilt and contended that he was falsely implicated.

5. Learned trial court after considering the evidence and relying on the material, recorded a finding and found him guilty for the offences punishable under Section 302 IPC.

6. Shri Mishra, learned counsel appearing for the appellant, contended that there is absolutely no evidence against the appellant. He further contended that even if the recovery of articles is accepted, it will be a case under Section 411 of I.P.C.

7. Shri Rajpoot, learned counsel appearing for the State, on the other hand, contended that the appellant has committed murder and has been rightly convicted for the offence punishable under Section 302 IPC.

8. We have heard learned counsel for the parties and gone though the record minutely.

9. In this case, the fact that the death of Bindamati Bai is homicidal has not been disputed by learned counsel for the parties. Even otherwise, it is also proved by the post mortem report and the evidence of Dr. C.S. Patel (P.W. 11) who conducted

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autopsy that the death was homicidal. Accordingly it is held that the death of Bindamati Bai was homicidal.

10. There is circumstantial evidence against the appellant. One of the circumstances is that P.W.11 Mangli Bai in her statement had stated that the accused is her cousin i.e. son of elder mother. She has further stated that accused had come to her house and demanded Rs.500/- on the pretext that he had to perform the marriage of his daughter. On that date, one Prakash Seth had come to her house and she sold 60 boras paddy. The accused helped her in filling up the bags and weighing the paddy. She has also stated that it was after nine years that the accused had come and remained there for four days and returned on Tuesday saying that he was going to his village. It was during his presence the talk had taken place that Mangli Bai has to go to attend the marriage ceremony in her relations at village Rikotar. She has also stated that in the morning of Wednesday, she went to village Rikitar to attend the marriage along with her daughter. She further stated that her mother-in-law i.e. Bindamati Bai and son Pilaram were left in the house and Pilaram was also to go to *Barat*. At village Rikotar, she was informed that her mother-in-law is not in a condition to walk. She came back to her house and found that her mother-in-law is dead. She also found that the ornaments were missing from the body of her mother-in-law, which she was wearing. Certain articles from the house were also missing. The torch kept below the pillow of her mother-in-law was also missing. She lodged the report to the police station. She has

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stated that three types of ornaments were mixed and out of them she had identified her ornaments in the identification parade. She had also identified the articles in the Court. In Para-6 of her statement she had stated that golden piparpatti which was being worn by her mother-in-law i.e. article A, Nagmori pair and Kathar pair i.e. article B and C, silver Sakri (article D), silver coin (article E), silver Gathla (article F), Lota (article G), silver chain (article H) and torch (article I) were produced in the Court and she had identified the same. The defence has not been able to demolish. The Court below has relied on this. We have also given our thoughtful consideration. So far as identification of the property is concerned, it has been duly identified and this is the property which has been recovered from accused person.

11. We have also gone through the evidence of P.W.-15 Tikeshwar Singh, Naib Tahsildar, who got the identification conducted. There is nothing in his cross-examination to demolish the testimony. He had denied the suggestion that the Police had given the ornaments without seal. So far as recovery is concerned, P.W.-6 Jhulanbai has testified that accused had come to her house on Friday and after sitting sometime kept his Jhola there and had gone. He had given to her one Nagmori and Kathar to keep them saying that these are the ornaments of his wife. Thereafter, she put the ornaments at the house of one Chandrika Prasad who gave Rs.1300/- to her. She gave the said amount to the accused. On the next day he had come along with Police and

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the Jhola was given to the Police. So far as the recovery of Jhola is concerned, it is well proved. So far as the articles are concerned, they were seized while the accused was apprehended. PW-14 J.S. Dhurwe is another witness, who has testified that when the accused was arrested near the saw mill, the articles were seized from him. PW-4 Neelkanth is the witness who has testified that the memorandum was recorded in his presence and the seizure was effected. At the time of seizure, these articles were seized. Ex.P-1 is the memorandum and Ex. P-2 to P-5 are the seizure memos, which have been proved by PW-4. The accused has not been able to say as to how the articles have come in his possession. Admittedly, these articles have been identified and there is no dispute that accused did not claim any article.

12. The next question arose for consideration is who inflicted the injuries to the deceased, so as to bring home the offence against the appellant. The prosecution has examined various witnesses.

13. We have also gone through the evidence of P.W.-3 Pila Ram, who is the son of Manglibai. He had stated that his Mother had gone to attend the marriage ceremony leaving him and his grandmother in the house. Thereafter, he had also gone to attend marriage ceremony leaving his grandmother and the accused in the house. This circumstance has also been relied upon by the trial Court. In our opinion, it is a very material circumstance. It was the accused who was in the need of money and demanded Rs. 500/- from Manglibai and it was in his presence 60 boras of

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paddy were sold. The accused helped Manglibai in filing up the boras and weighing it. Thereafter the accused went out pretending that he is leaving the house, but came back after Mangli Bai along with her daughter left the house for attending the marriage of some relative. The testimony of Pila Ram is that when he left the house, Bindamati Bai and the accused were there. When Bindamati Bai died, thereafter the accused was hiding and was apprehended near the Saw Mill. He was found along with the articles which are belonging to Manglibai and the deceased. Some of the seized ornaments were worn by the deceased. Then immediately next day the bag was recovered with the articles. These recovery and seizure are well proved. The fact that they belong to deceased and Manglibai is also established. It was also borne out from the record that the accused was in the need of money and he demanded Rs. 500/- from Manglibai. Testimony of Pilaram also establishes that the accused and the deceased were last seen together.

14. The question arose for consideration is as to whether the circumstantial evidence which has been brought on record is sufficient to prove the guilt. It is well settled that in cases in which the evidence is purely of a circumstantial nature, we are conscious that the facts and circumstances from which the conclusion of guilt is sought to be drawn must be fully established beyond any reasonable doubt and facts and circumstances should not only be consistent with the guilt of the accused but they must

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be in their effect as to be entirely incompatible with the innocence of the accused and must exclude every reasonable hypothesis consistent with his innocence.

15. In the case of ***Eerabhadrappa –Vs.- State of Karnataka*** reported in ***A.I.R. 1983 SC 446*** where after committing murder, the accused was apprehended about a year and the recovery of articles was made immediately thereafter and it was identified, the Hon'ble Apex Court has held in para 13 that:-

> *"This is a case where murder and robbery are proved to have been integral parts of one and the same transaction and therefore the presumption arising under Illustration (a) to Sec. 114 of the Evidence Act is that not only the appellant committed the murder of the deceased but also committed robbery of her gold ornaments which form part of the same transaction. The prosecution has led sufficient evidence to connect the appellant with the commission of the crime. The sudden disappearance of the appellant from the house of P.W. 3 on the morning of March 22, 1979 when it was discovered that the deceased had been strangulated to death and relieved of her gold ornaments, coupled with the circumstance that he was absconding for a period of over one year till he was apprehended by P.W. 26 at village Hosahally on March 29, 1980, taken with the circumstance that he made the statement Ex. P-35 immediately upon his arrest leading to the discovery of the stolen articles, must necessarily raise the inference that the appellant alone and no one else was guilty of having committed the murder of the deceased and robbery of her gold ornaments. The appellant had no satisfactory explanation to offer for his possession of the stolen property. On the contrary, he denied that the stolen property was recovered from him. The false denial by itself is an incriminating circumstance. The nature of presumption under illustration (a) to Sec. 114, must depend upon the nature of the evidence adduced. No fixed time limit can be laid down to determine whether possession is recent or otherwise and each case must be judged on its own facts. The question as to what amounts to recent possession sufficient to*

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justify the presumption of guilt varies according as the stolen article is or is not calculated to pass readily from hand to hand. If the stolen articles were such as were not likely to pass readily from hand to hand, the period of one year that elapsed cannot be said to be too long particularly when the appellant had been absconding during that period. There was no lapse of time between the date of his arrest and the recovery of the stolen property."

16. In the light of above, we have considered the entire case. The recovery is made within two days, which is well proved. Immediately thereafter, the accused has not been able to offer any explanation. Under the circumstances, we are of the opinion that there is no infirmity in the impugned judgment.

17. The appeal fails and is accordingly dismissed.

18. Before parting, we appreciate the valuable assistance rendered by the counsel for the parties.

Sd/-
Fakhruddin
Judge
14/6/2005

Sd/-
Dilip Raosaheb
Deshmukh
Judge
14/6/2005

Hande/Pathak